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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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NO. 2802

UNITED STATES OF AMERICA,	}
Appellant.	
vs.	
SUI JOY,	}
Appellee.	

PETITION FOR REHEARING

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E. A. MOTT-SMITH,  
W. L. STANLEY,  
Counsel for Appellee.

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Filed

MAR 2 - 1917



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UNITED STATES OF AMERICA,	}
Appellant,	
vs.	
SUI JOY,	Appellee.

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## PETITION FOR REHEARING.

The appellee respectfully petitions that a rehearing be granted for the following reasons:—

1. That the court erred in its Opinion filed herein on the 5th day of February, 1917, and the said Opinion was based upon a misconception of the undisputed facts appearing in the record herein, in so far as it remanded the above cause to the District Court of the United States in and for the Territory of Hawaii with instructions to remand the appellee *for deportation*, because it appears from the said record that the said cause came to this court on appeal from the judgment of the said District Court sustaining the appellee's demurrer to the return of the appellant to the appellee's petition for a writ of habeas corpus, which writ was issued upon the arrest

of the appellee by the Immigration officers at Honolulu upon the charge of a violation of Section 3 of the Immigration Act, and before any hearing had been given to the appellee on the charges upon which the arrest was based ;

2. That, as appears by the said record, no hearing has up to the date hereof been given to the appellee by the said or any Immigration officers on the charges upon which his arrest was based, and that no determination has been made by the said or any Immigration officers or by any official or officials of the Department of Labor either as to the guilt or innocence of the appellee on the said charge or as to whether the appellee should or should not be deported ;

3. That the appellee cannot lawfully be deported until he has been given a hearing by the Immigration officer or officers at Honolulu on the charges upon which his arrest was based, nor until a decision adverse to the appellee has been rendered by the Department of Labor upon the recommendation of the said officer or officers ;

4. That the court, we think, overlooked the argument of the appellee that, it being an admitted fact that the appellee was a bona fide resident of the Hawaiian Islands at the time the same were annexed to the United States, the Hawaiian Islands were the country whence the appellee came into the United States ; and that as by Sections 20 and 21 of the Immigration Act an alien can lawfully only be deported "to the country whence he came," and the country whence the appellee came to the United States is now

an integral part of the United States, he cannot lawfully be deported therefrom, and there is no country to which he can lawfully be deported. That the effect of sustaining this argument of the appellee would necessarily be the affirmance of the judgment of the District Court.

Dated Honolulu, T. H.,

February 24, 1917.

E. A. MOTT-SMITH,  
W. L. STANLEY,  
Counsel for Appellee.

I hereby certify that in my opinion there is good ground in law for a rehearing in the above entitled cause, and that this petition is not filed for the purpose of delay.

W. L. STANLEY.

